

IN THE FIGURES

Applicants submit herewith Replacement Figure 6, provided on a separate sheet.

## REMARKS

The claims are 1, 2, 4-9 and 11-20, of which Claims 1 and 14 are independent. Claims 1 and 6 have been amended to better define what is regarded as the invention. Claims 4, 5 and 11-13 have been amended solely as to dependency. Claims 3 and 10 have been cancelled, with a portion of their subject matter incorporated into Claim 1. Favorable reconsideration is respectfully requested.

The Abstract has been objected to for use of the terms “invention” and “means.” In order to obviate this objection, Applicants have amended the Abstract to remove the use of such terms. Accordingly, withdrawal of the present objection is respectfully requested.

The Office Action further states that the drawings are objected to under 37 C.F.R. § 1.83(a) for allegedly failing to show every claimed feature of the present invention. Particularly, the Examiner has indicated that the limitations of Claims 7-10 do not appear in the drawings. To overcome this rejection, Figure 6 has been amended to illustrate one embodiment of the hanging element, the loop and hook fastening element, as described in Claim 8. For consistency, Applicants have amended the specification at page 16, paragraph [0042] to further describe this feature. No new matter has been added, as these amendments are fully supported earlier in the specification at page 8, paragraph [0025]. Applicants further note that alternative hanging elements as recited in Claim 9 including, e.g., apertures to accommodate a peg in a pegboard, are already depicted in Figures 1 and 5 by reference numeral 60. Accordingly, the amended drawing is now believed to obviate the present objection.

Claim 13 has also been amended to recite --blank according to claim 1--.

Applicants kindly believe this change to now render moot the objection under 37 C.F.R. § 1.75(c) thereto.

Further in the Office Action, Claims 1-12 are rejected under 35 U.S.C. § 112, second paragraph, for alleged indefiniteness as to whether the claims include the plurality of display cartons as an element so as to comprise a combination. Applicants respectfully draw the Examiner's attention to the fact that the recitation of a plurality of cartons appears in the preamble of the claim as merely descriptive of the unitary display function, for which the module support blank is being claimed. "The determination of whether a preamble limits a claim is made on a case-by-case basis in light of the facts in each case; there is no litmus test defining when a preamble limits the scope of a claim." MPEP § 2111.02 at 2100-51 (8<sup>th</sup> Ed., Rev. 3, August 2005) (citing *Catalina Mktg. Int'l v. Coolsavings.com, Inc.*, 289 F.3d 801, 808, 62 USPQ2d 1781, 1785 (Fed. Cir. 2002)). For claims 1-12, therefore, the plurality of cartons does not constitute a limiting feature and, therefore, the series of claims is directed to only a module support blank and not a combination. Accordingly, in light of the foregoing, Applicants believe the claims are definite and therefore satisfy all of the requirements of 35 U.S.C. § 112, second paragraph.

Applicants gratefully acknowledge the Examiner's indication at page 6 of the Office Action that Claims 10-12 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. However, the claims have not been so amended for the reasons discussed below.

Claims 1-5 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 5,213,220 (*McBride*). The Examiner has also rejected Claims 6-9 and 14-20 under 35 U.S.C. § 103(a) as allegedly unpatentable over *McBride*. The reasons for these rejections are respectfully traversed.

In one important aspect, Claim 1, as amended, recites at least one shelf panel disposed between the first side panel and the second side panel and located above or below the face panel and having two perforated and detachable or cut opposing sides bordering the first and second side panels, the at least one shelf panel being movable or removable by tearing or cutting along perforations to form the at least one access area. Support for this amendment is located throughout the specification including, for example, at page 10, paragraph [0029] and page 11, paragraph [0031]. This feature is advantageous in that it facilitates assembly by acting as a placement guide for containers above and below the shelf.

In contrast, the panels 129 forming ledges 23 through 27 in *McBride* are not removable or movable in the sense of Claim 1, because they provide support. As described at Column 2, lines 16-25 and Column 3, lines 49-59, the rear wall sections and the side walls, together with the ledges, form compartments necessary for proper operation of the cited invention. Specifically, without the panels 129, it would not be possible to assemble the compartments as these panels form the ledges that constitute the bottom surfaces (floors) thereof. Thus, the ledges in *McBride* formed of panels 129 are not “movable or removable” as recited in Applicants’ Claim 1, for the purpose of providing an access area. Notably, paragraph [0031] of the specification indicates that “a shelf is not required” since it functions principally as an aid for efficient positioning of

containers within the module support. Therefore, Applicants submit that *McBride* does not meet the limitation “shelf panel being movable or removable by tearing or cutting” recited in Claim 1.

Anticipation requires that “each and every element as set forth in the claim” be disclosed in the prior art reference. MPEP §2131 at 2100-76 (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). As well, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Id.* (quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). Accordingly, Applicants respectfully submit this reference does not anticipate all of the features of the present invention as now recited in Claim 1.

With regard to the obviousness rejection, Applicants understand the Examiner to be reading Claim 14 as not claiming the element of a plurality of cartons, consistent with the Examiner’s earlier position at page 4 that “a combination is not claimed” with respect to Claim 1. However, Applicants respectfully note that in contrast to Claim 1, the plurality of cartons is clearly recited as distinct limitation in Claim 14.

The Office Action then states at page 5 that “the only difference [of *McBride* from the present invention] being that there are not attaching structure for hanging or fixing elements placed on the support.” Applicants respectfully disagree. As understood from the disclosure, *McBride* is directed to providing an improved display rack. According to the specification, this is accomplished through “a pair of vertical horizontally spaced rows of . . . compartments.” Column 1, lines 32-33. However, as can be seen in Figures 1 and 7, the compartments (A) themselves merely constitute empty

space. Indeed, at Column 2, lines 20-22 the description states that, illustratively, “compartment A in FIG. 1 being formed by top wall 11, ledge 21, side wall 14 and flange 40.”

On the other hand, Claim 14 recites a unitary display comprising both a plurality of cartons as well as a module support holding said plurality of cartons. An illustration of these features may be seen, for example, in Figure 4. Unlike in *McBride*, wherein display items can be mounted on hooks to dispose such items within each compartment, in this embodiment of the present invention cartons with radially-openable access panels are disposed within the access areas of the module support, together comprising the unitary display.

Advantageously, this configuration allows for variation in the cartons that can be placed within the access areas of the present invention. For instance, because the access area is a continuous space (as illustrated in Figures 2 and 6), two or more narrower containers may be placed side-by-side therein to utilize the same access area or, alternatively, a single, wide carton may utilize the entire space. *See* specification at page 11, paragraph [0032]. Conversely, in *McBride* the flange or flap 40 limits the space to only two compartments for displaying items.

“To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” MPEP § 2143.03 at 2100-139 (citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)). Respectfully, no suggestion has been found in *McBride* for a unitary display comprising a plurality of cartons, as recited in Claim 14.


Accordingly, Applicants submit that Claim 14 is patentable over the cited art, and kindly request withdrawal of the rejection under 35 U.S.C. § 103(a).

In addition, the other claims in this application depend from one or another of the independent claims discussed above and, therefore, are submitted to be patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

Wherefore, it is respectfully submitted that the cited art does not disclose or suggest the presently claimed invention. Accordingly, passage to issue of presently claimed invention is respectfully requested.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

  
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